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REMARKS

1) FINALITY IMPROPER - NEW ACTION REQUIRED

The Examiner has improperly made this action Final. Specifically, the rejection of claim 1, for example, was changed from the previous office action to include an additional reference. No amendments were made to this claim by Applicant that necessitated such an action; thus, finality is improper and must be withdrawn.

2) RECITATION OF LARGELY IRRELEVANT QUOTATIONS FROM A REFERENCE DOES NOT CONSTITUTE A REBUTTAL

Unfortunately, this type of response appears to be recurring based upon earlier office actions. As an example, Applicant has pointed out that the Cofano et al. reference specifically and explicitly does not teach what the Examiner has asserted. Rather than provide substantive explanation, analysis or support for a rejection, the Examiner has literally provided a quotation from the Cofana reference that spans pages 4, 5 and 6 of the present Office Action. Despite this tedium, the section still does not address the CLAIMED element of e.g., monitoring data packages to determine revenue for the service. Of course, the Examiner must also consider the claim as whole, which is a method of having a paid service that maintains data connectivity of a remote medical device patient with a database network. Data is collected and provided. Data packets being transferred are monitored, and fees/revenue are determined accordingly.

As explained previously, and certainly not rebutted by the Examiner's 3-page quotation of the reference, Cofano merely teaches traditional billing for medical services. The statement that the historical database may be accessed for study purposes and that the administrators could charge a fee for such access does not teach monitoring data packets for revenue, and certainly does not teach doing so in the context of the claims considered as a whole. Applicant has previously articulated this and provided an indication in other portions of the Cofana reference that support this position. Applicant's previous remarks are herein incorporated by reference.

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3) **FACTUALLY INCORRECT ASSERTIONS REGARDING COFANO NOT RETRACTED**

In the previous response, Applicant challenged the Examiner's statement that Cofano "suggests an implanted medical device which [sic] stimulating body organs and tissue to evoke a response for enhancing a body function or to control pain, and drug delivery devices for releasing a bolus at a selected site (FIG. 10, Page 10, Paragraphs 0101-0104)."

This statement is wholly inaccurate, as the terms "bolus," "evoke," "stimulating" and "pain" do not appear anywhere in the reference. References to "drug" relate solely to pharmaceutical purposes, not drug delivery.

Notably, this is not one of "Applicant's Arguments" that the Examiner has selectively chosen to respond to at page 4 of the office action by citing copious amounts of text. Rather, this blatantly incorrect statement is effectively included in the present Office Action through the Examiner's statement in paragraph 3 that the combination of Maus and Cofana (and newly added Kumar) is based upon "substantially the same reasons given in the previous Office Action, *and incorporated herein.*" (*Emphasis added*). The fact that this statement was made and allowed to stand is wholly improper.

4) **KUMAR DOES NOT TEACH IMPLANTABLE DEVICES**

Applicant respectfully expresses a great deal of frustration with the present examination. The most basic principles of examination and patent law are seemingly overlooked in order to maintain a completely unsupportable position.

Kumar is cited solely for the purpose of purportedly showing implantable and implanted device, which according to the Examiner are "clearly shown (in Col. 3, lines 21-65 of Kumar)."

A text search of the Kumar reference was done on an electronic version of the document at the U. S. Patent and Trademark Office website. The terms "implant", "implanted," and "implantable" do not appear anywhere in the document. The cited

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portion of the reference deals solely and exclusively with external devices--nothing that could possibly be confused with an implanted medical device.

This rejection is without merit.

5) REQUEST TRANSFER OF APPLICATION

While Applicant understands that there is no basis to require such action, Applicant respectfully requests that this application be transferred to an Examiner that has a better understanding of medical devices, implantable medical devices, implantable medical device communication systems and implantable medical device data networks. Applicant further recognizes this is an extremely unusual request, but under the circumstances it appears the only appropriate course of action short of appeal.

In the present action alone, two references are cited for teachings they clearly do not contain. The claims are not being considered for what they actually claim in context and Applicant's repeated attempts to discuss the merits have received conclusory, unsupported responses to tangential issues with complete avoidance of particularly troubling aspects (e.g., paragraph 3 above). Furthermore, this unfortunate pattern has been presented repeatedly over the course of this prosecution.

Again, Applicant respectfully requests the withdrawal of Finality and the transfer of this application to another Examiner for substantive examination prior to proceeding with a formal appeal.

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6) CONCLUSION

Applicant respectfully asserts that the present claims are allowable over the art of record and requests notice of the same. Should the Examiner disagree, Applicant respectfully requests withdrawal of the finality of the present Office Action and transfer to another Examiner.

Respectfully submitted,

Date

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